



for preliminary injunction, along with a brief in support thereof and supporting declaration and exhibits. [ECF Nos. 6-10]. The magistrate judge scheduled a status conference for September 25, 2017 and ordered HLC serve Defendants with a copy of the scheduling order, to which HLC complied. *See* [ECF No. 19]. Defendants did not attend the status conference. *See* [ECF No. 21]. The magistrate judge entered an order on September 25, 2017, scheduling a preliminary injunction hearing, setting forth certain deadlines for various pre-hearing matters, and ordering HLC to serve Defendants with a copy of the Order. *See* [ECF No. 22 at 2]. HLC filed a certificate of service for these documents on September 26, 2017. *See* [ECF No. 23]. Defendants failed to file any response to HLC's motion for preliminary injunction, and they have not complied with any other deadlines as set forth in the court's September 25, 2017 order. Tr. 4:24-25; 5:1-6. HLC complied with the court's order by submitting a witness list, marking and exchanging exhibits and by submitting proposed findings of fact and conclusions of law. Tr. 5:7-11. On October 13, 2017, HLC filed a motion for entry of default, and the Clerk entered default on October 16, 2017. *See* [ECF Nos. 28, 30]. On October 18, 2017, HLC moved for default judgment and to convert the preliminary injunction hearing scheduled for October 25, 2017 into a hearing for permanent injunctive relief and to resolve all claims asserted in the complaint. *See* [ECF No. 31]. On October 19, 2017, the court granted HLC's request and ordered that it serve a copy of the court's order and the docket sheet on Defendants by overnight certified mail. *See* [ECF No. 33]. Defendants did not appear for the hearing for preliminary and permanent injunction and for default judgment. Tr. 7:23-25.

### **Default Judgment Hearing**

A hearing on HLC's motion for default judgment was held on October 25, 2017. During the hearing, HLC presented testimony of its Chief Financial Officer, James Emmerson, who testified that Defendants owed \$9,719.05 for failure to pay certain franchising fees owed under the

Franchise Agreement. *See* ECF Nos. 8-3; 8-5]. Accordingly, based upon the undisputed facts and the testimony presented at the hearing, it is respectfully recommended that the following Order be entered:

IT IS HEREBY ORDERED that Plaintiff's Motion for Default Judgment [ECF No. 31] is GRANTED as follows:

1. Plaintiff has proven by a preponderance of the evidence that Defendants are liable to it for a breach of the franchise agreement. The Court finds that Plaintiff is entitled to an amount of \$9,719.05 for Defendants' breach of contract;
2. Plaintiff shall be awarded its costs and expenses, including reasonable attorneys' fees, in connection with this action as provided for in the parties' franchise agreement and shall file its petition for attorneys' fees forthwith.

The Clerk shall hereby enter judgment on behalf of Plaintiff in the amount of \$9,719.05, with costs taxed to the Defendants.

### **III. CONCLUSION**

Therefore, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72, and the Local Rules for Magistrates, the parties have until **November 21, 2017** to file objections to this report and recommendation. Unless Ordered otherwise by the District Judge, responses to objections are due **December 5, 2017**. Failure to file timely objections may constitute a waiver of any appellate rights. *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Plaintiffs shall serve a copy of this Report and Recommendation upon Defendants at their last known addresses via regular first class mail and provide a certificate of service thereafter.

Dated: November 7, 2017

Respectfully submitted,

s/ Cynthia Reed Eddy

Cynthia Reed Eddy

United States Magistrate Judge

cc: Honorable David S. Cercone  
United States District Judge  
*via CM/ECF electronic filing*

all counsel of record *via CM/ECF electronic filing*